

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

SONJA WHITLOW,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 3:07-CV-960-MEF
	)	[WO]
JUDGE BAILEY, et al.,	)	
	)	
Defendants.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

In this 42 U.S.C. § 1983 action, Sonja Whitlow [“Whitlow”], an indigent inmate, challenges the constitutionality of a conviction and sentence entered against her by a municipal court in August of 2007. Whitlow seeks a new trial.

Upon review of the complaint, the court concludes that dismissal of this case prior to service of process is proper under 28 U.S.C. § 1915(e)(2)(B)(ii).<sup>1</sup>

**DISCUSSION**

Whitlow complains that the trial court deprived her of several constitutional protections during proceedings related to her conviction and sentence. Specifically, Whitlow argues she was denied the “right to an attorney[,]... denied a right to a trial ... before being sentenced[,] ... and denied the right to be heard of evidence[] that would have been favorable

<sup>1</sup>A prisoner who is allowed to proceed *in forma pauperis* in this court will have her cause of action screened in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B). This screening procedure requires the court to dismiss such action prior to service of process if it determines that the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

to plaintiff....” *Plaintiff’s Complaint - Court Doc. No. 1* at 2-3. These claims go to the fundamental legality of Whitlow’s conviction and resulting sentence. Consequently, a judgment in favor of Whitlow on these claims would necessarily imply the invalidity of this conviction. Under the facts and circumstances of this case, the court concludes that the claims presented provide no basis for relief in a 42 U.S.C. § 1983 action at this time. *Edwards v. Balisok*, 520 U.S. 641, 646 (1997); *Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

No cause of action exists under § 1983 unless the conviction challenged by Whitlow has been reversed on direct appeal, expunged by executive order, declared invalid by an authorized state tribunal, or called into question by a federal court’s issuance of a writ of habeas corpus. *Heck*, 512 U.S. at 489. The relevant inquiry is “whether a judgment in favor of the plaintiff would necessarily imply the invalidity of [her] conviction....” 512 U.S. at 487; *Balisok*, 520 U.S. at 646-648. “It is irrelevant that [the plaintiff] disclaims any intention of challenging [her] conviction; if [she] makes allegations that are inconsistent with the conviction’s having been valid, *Heck* kicks in and bars [her] civil suit.” *Okoro v. Callaghan*, 324 F.3d 488, 490 (7<sup>th</sup> Cir. 2003). The rule of *Heck* is not limited to a request for damages but is equally applicable to an inmate’s request for declaratory judgment or injunctive relief. *Balisok, supra.* An inmate “cannot seek to accomplish by a section 1983 declaratory judgment what [she] must accomplish solely through a writ of habeas corpus.” *Jones v. Watkins*, 945 F.Supp. 1143, 1151 (N.D. Ill. 1996); *Miller v. Indiana Dept. of Corrections*, 75 F.3d 330, 331 (7<sup>th</sup> Cir. 1996) (“[T]he [relevant] issue,” when applying *Heck*, “is not the

relief sought, but the ground of the challenge.”); *Heck*, 512 U.S. at 481 (“[H]abeas corpus is the exclusive remedy for a ... prisoner who challenges” a conviction or sentence, “even though such a claim may come within the literal terms of § 1983....”); *Balisok*, 520 U.S. at 645 (The “sole remedy in federal court” for a prisoner challenging the constitutionality of a conviction or sentence is a petition for writ of habeas corpus.). In *Balisok*, the Court “reemphasize[d] ... that a claim either is cognizable under § 1983 and should immediately go forward, or is not cognizable and should be dismissed.” *Id.* at 649.

Whitlow’s August 2007 conviction has not been reversed, expunged, invalidated or questioned in an appropriate state or federal action. *Heck* and its progeny therefore bar Whitlow’s bar the use of § 1983 to mount a collateral attack on this conviction. 512 U.S. at 489 (“Even a prisoner who has fully exhausted [all] available ... remedies has no cause of action under § 1983 unless and until the conviction ... is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.”); *Abella v. Rubino*, 63 F.3d 1063, 1066 n.4 (11<sup>th</sup> Cir. 1995) (“*Heck* clarifies that *Preiser* is a rule of cognizability, not exhaustion.”).

## CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(ii).

It is further

ORDERED that on or before November 12, 2007 the parties may file objections to this Recommendation. Any objections filed must clearly identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive

or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). See *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). See also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 29<sup>th</sup> day of October, 2007.

/s/Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES MAGISTRATE JUDGE